SUBMITTED

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 348

THE UNITED STATES OF AMERICA, PLAINTIFF IN ERROR

vs.

THE MINNESOTA MUTUAL INVESTMENT COMPANY

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

FILED APRIL 6, 1926

(31011)

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1 [Caption omitted.]

[File endorsement omitted.]

In United States District Court, District of Colorado

THE MINNESOTA MUTUAL INVESTMENT COMPANY, a Corporation, plaintiff

vs.

THE UNITED STATES OF AMERICA, defendant

Bill of Complaint

Filed Sept. 20, 1923

Comes now the plaintiff and, complaining of the defendant, alleges:

I

2 That plaintiff now is, and at all times hereinafter mentioned, was, a corporation organized and existing under and by virtue of the laws of the State of South Dakota, and permitted to do business in the State of Colorado by compliance with the laws of said State in that behalf provided.

II

That this cause does not involve an amount exceeding the sum of ten thousand dollars ($10,000.00) and is founded upon a regulation of an executive department of the United States Government and the cause of action is within the jurisdiction of this court, as provided in paragraph 20th of section 24 of the judiciary act of Congress, approved March 3, 1911.

III

Plaintiff further alleges that in a cause lately pending in the United States District Court within and for the District of Colorado, wherein the Minnesota Mutual Investment Company, this plaintiff, was plaintiff and Victor C. McGirr et al. were defendants, Cause No. 6720, such proceedings were had that the plaintiff herein was required to and it did on the 17th day of June, 1918, deposit in the registry of this court the sum of $15,143.92. That the clerk of this court did immediately deposit the said sum of money in the First National Bank, a banking house in the city of 3 Denver, Colorado, and theretofore designated by the court as one of the depositaries of said court and said sum of money remained in said bank to the credit of said court until the 6th day of May, 1920, when the same was returned and paid to plaintiff herein.

That during all of said period of time the said bank paid interest thereon at the rate of 2% per annum, and paid same semiannually.

IV

Plaintiff further alleges that for a long series of years such interest so paid by the said depositary was added to the deposit for the benefit of the party to whom said deposit belonged but that shortly before the deposit of the above sum of money, as plaintiff is informed and believes, and so charges the fact to be, the Secretary of the Treasury by executive order required all depositaries of court funds to pay all sums of interest to the Treasurer of the United States and that the said bank did pay to the United States and the United States did receive the sum of 2% upon said sum of $15,143.92 semiannually from June 18, 1917, to the 6th day of May, 1920, in accordance with said executive order.

V

That the United States of America was not interested in the said sum of money so deposited, had no right, title, or interest
4 therein directly or indirectly, and the said interest so paid to the United States of America was and is the property of the plaintiff herein, and was received by the United States of America for the use and benefit of plaintiff.

Wherefore plaintiff prays judgment in the sum of $571.26, for costs of this action and such other and further relief as to the court shall seem meet.

EDWIN H. PARK,
Attorney for Plaintiff.

[*Duly sworn to by Edwin H. Park. Jurat omitted in printing.*]

5 [Affidavit of service, filed Sept. 20, 1923, omitted in printing.]

6 In United States District Court

[File endorsement omitted.]

[Title omitted.]

Demurrer

Filed Nov. 30, 1923

7 Comes now the defendant above named, by Granby Hillyer, United States attorney for the District of Colorado, who is acting herein in its behalf by authority of the Attorney General of the United States of America, and demurs to the complaint heretofore filed herein on the following grounds:

First. That it appears upon the face of the complaint that it does not state facts sufficient to constitute a cause of action against the defendant.

Second. That it appears upon the face of the complaint that the court has no jurisdiction of the subject of the action.

GRANBY HILLYER,
United States Attorney for the District of Colorado.
JOHN A. MCCANN,
Assistant United States Attorney for the District of Colorado.

8 In United States District Court

[Title omitted.]

Order overruling demurrer

July 31, 1924

The demurrer to the complaint herein having heretofore come on to be heard and having been argued by Edwin H. Park, Esquire, as attorney for the plaintiff, and by John A. McCann, Esquire, assistant district attorney, as attorney for the defendant; and having been taken under advisement, and the court having considered the same and being now fully advised in the premises;

It seemeth to the court now here that the complaint herein is sufficient in law to be answered unto, and so the said demurrer is hereby overruled.

9 Thereupon it is ordered by the court that the defendant answer the complaint herein within thirty (30) days from this day.

In United States District Court

[File endorsement omitted.]
[Title omitted.]

Answer

Filed Nov. 8, 1924

Comes now the United States of America, defendant in the above-entitled action, by its attorneys, George Stephan, United States attorney for the District of Colorado, and John A. McCann, assistant United States attorney for the District of Colorado, and

10 in answer to the complaint herein:

I

As to the allegations contained in paragraph numbered "I" of the complaint, defendant alleges that it has not and can not obtain sufficient knowledge or information upon which to base a belief and, therefore, denies same.

II

As to the allegations in paragraph numbered "II" of the complaint, the defendant admits that this cause does not involve an amount exceeding the sum of ten thousand dollars ($10,000.00); and the defendant denies that the alleged cause of action set forth in the complaint is within the jurisdiction of the court.

Defendant denies each and every allegation contained in said paragraph "II" of the complaint not specifically herein admitted.

III

Defendant admits that in a cause lately pending in the District Court of the United States for the District of Colorado, wherein the Minnesota Mutual Investment Company (this plaintiff) was plaintiff and Victor C. McGirr, et al., were defendants (being case numbered 6720 in this court) such proceedings were had that the plaintiff herein was required to and did, on the 17th day of June, 1918, deposit in the registry of this court the sum of $15,-
11 143.92, which sum was thereupon immediately deposited by the clerk of the court in the First National Bank, a banking house in the city and county of Denver, in the State of Colorado, to the credit of said court, there remaining as such credit until the 6th day of May, 1920, when the same was returned and paid to the plaintiff herein.

Defendant admits that the court purported to designate the said bank as one of the depositaries of said court, but avers that, in making such designation, the court did not, and, under the law of the land, could not, alter, affect, annul, or set aside the right of the defendant herein, under any contract entered into by said defendant with said bank as a depositary of the United States designated as such by the Secretary of the Treasury, to collect, receive, and take into possession, any and all interest provided for in, made payable to, and paid or payable to said defendant, under and by virtue of said contract, on monies paid into court in causes pending therein and deposited in such designated depositary of the United States by the clerk of said court; and the defendant further avers that the purported designation aforesaid of the said court, in manner and form as made, was, under the facts of this case, ineffective, void, and made without warrant and authority of law.

12 Admits that during all of the period of time between the 17th day of June, 1918, to the 6th day of May, 1920, both inclusive, the said bank paid interest on the said sum at the rate of 2% per annum and paid the same semiannually to the Treasurer of the United States.

Denies each and every allegation contained in said paragraph "III" of the complaint not specifically herein admitted.

IV

Defendant has no knowledge or information upon which to base a belief and, therefore, denies the allegation in paragraph numbered IV that for a long series of years such interest so paid by the depositary was added to the deposit for the benefit of the party to whom said deposit belonged.

Defendant admits that the said bank paid to the United States and the United States did receive, through the Treasurer of the United States, the sum of 2% per annum upon said sum of $15,143.92 in semiannual payments from June 17, 1918, to the 6th day of May, 1920, by virtue of a contract entered into between the defendant and said bank.

Defendant denies each and every allegation contained in said paragraph "IV" of the complaint not specifically herein admitted.

13

V

In answer to the allegations contained in paragraph numbered V of the complaint defendant alleges that on or about the 9th day of May, A. D. 1913, the United States of America, by its proper officer and officers, and the said the First National Bank of Denver, Colorado, through its proper officer and officers, entered into a contract concerning the payment of interest upon all Government deposits, including court funds, carried with the bank by virtue of said designation as a depositary of the United States, under the rules and regulations theretofore promulgated and published by the Secretary of the Treasury under and by virtue of the authority conferred upon him by the laws of the United States.

Defendant further alleges that said contract consisted of an offer made on behalf of the defendant, by its proper officer and officers, on or about the first day of May, A. D. 1913, and contained in a letter bearing date, the first day of May, A. D. 1913, then and there in words and figures substantially as set forth in the copy of the said letter annexed to, and made a part of this answer, and denominated Exhibit "I" (reference to which is hereby made for greater certainty), and an acceptance of said offer by the said depositary, the First National Bank of Denver, Colorado, on or about the 9th day of May, A. D. 1913, by letter signed by one A. V. Hunter,

14 then president of the said bank, and regularly transmitted to the defendant herein, through its proper officer and officers, and which said letter is attached to and made a part of this answer and is denominated Exhibit "II," reference to which exhibit is hereby made for greater certainty.

Defendant further alleges that sums aggregating $571.26, being the amount set forth in paragraph "V" of the complaint, were paid to the defendant herein by the said the First National Bank of Denver, Colorado, under and by virtue of the said contract above set forth.

Defendant further alleges that in consideration for the payment by the said bank to the defendant of the said sums aggregating $571.26 and other like payments, the defendant (1) allowed the said bank the use of all Government deposits held on deposit therein under and by virtue of the terms of the said contract; (2) allowed the said bank the opportunity of obtaining the prestige and advertising connected with the handling of such Government deposits; (3) kept safe in its custody the collateral security pledged by the said bank to secure the said deposits; (4) supervised the said depositary in all matters in connection with the said deposit and the keeping thereof in the said depositary under terms of section 5153 of the Revised Statutes of the United States.

Defendant denies each and every allegation contained in said paragraph "V" of the complaint not specifically herein admitted.

Wherefore, the defendant having fully answered demands that judgment be entered herein in its favor and that it go hence with its costs in this behalf expended and prays such other and further relief as to the court may seem just and equitable in the premises.

GEORGE STEPHAN,
United States Attorney for
the District of Colorado.
JOHN A. McCANN,
Assistant United States Attorney
for the District of Colorado.

[*Duly sworn to by Edward D. Batchelder. Jurat omitted in printing.*]

(Copy)

Exhibit No. 1 to answer

TREASURY DEPARTMENT.
Washington, May 1, 1913.

PRESIDENT FIRST NATIONAL BANK,
Denver, Colorado.

SIR: On and after June 1, 1913, the department will require all national-bank depositaries, both regular and inactive, to pay interest at the rate of two per cent per annum on the average monthly amount of public deposits held by them, such interest to be paid semiannually, January 1 and July 1 of each year.

Your bank is at the present time designated as an active depositary with a maximum balance of $300,000. Please advise the department at once whether you will desire to continue as a depositary with your present designated deposit under this new regulation as to the payment of interest.

If you should not care under the new conditions to remain a depositary for the full amount of your deposit, but should desire to retain on deposit a smaller portion of public funds which you are now authorized to hold, please notify the department promptly

the amount which you may desire to retain, and your request
17 will be given due consideration.

A prompt reply is requested.

By direction of the Secretary:

Respectfully,

(Signed) JOHN SKELTON WILLIAMS,
Assistant Secretary.

(Copy)

Exhibit No. 2 to answer

FIRST NATIONAL BANK OF DENVER, COLORADO,
May 9, 1913.

Hon. TREASURER OF THE UNITED STATES,
Washington, D. C.

SIR: I beg to acknowledge receipt of your notification dated May 1st to the effect that on and after June 1, 1913, this depositary will be required to pay semiannual interest at the rate of two per cent per annum on its average Government deposits. I appreciate the futility of entering an objection to this order and on behalf of my associates will be compelled to acquiesce.

In order that this business may present some elements of
18 profit, we hereby apply for as large an increase in Government deposits as can be allotted, it being reported to us that an amount equal to a twenty-five per cent increase in Government deposits is to be put out throughout the country for the purpose of satisfying national banks with the business. If such an amount is allotted to us we would then receive $75,000 additional deposits, and I take the liberty of calling your attention to the fact that within the last sixty days the department has reduced the Government deposits of this bank by the sum of $100,000, and I respectfully request that that amount at least be restored to us.

Awaiting the honor of your reply, I remain,

Yours respectfully,

(Signed) A. V. HUNTER,
President.

[File endorsement omitted.]

19 In United States District Court

[Title omitted.]

Demurrer to answer

Filed Nov. 22, 1924

Comes now the plaintiff and demurs to the answer of the defendant and for grounds thereof, shows the court:

That said answer does not state facts sufficient to constitute a defense to plaintiff's cause of action.

EDWIN H. PARK,
Attorney for Plaintiff.

In United States District Court

[Title omitted.]

Minute entry of judgment

Jan. 5, 1925

At this day comes the plaintiff, by Edwin H. Park, Esquire, its attorney, and the defendant, by Clarence L. Ireland, Esquire,
20 assistant district attorney, also comes.

And the demurrer to the answer herein coming on now to be heard is argued by counsel. And the court having considered the same and being now fully advised in the premises, it seemeth to the court now here that the answer herein is not sufficient in law to be replied unto, and so the said demurrer is hereby sustained.

And thereupon the plaintiff moves the court for the entry of judgment upon the pleadings herein, and the court having considered the same, and being now fully advised in the premises, the court doth assess the plaintiff damages against the defendant at the sum of five hundred seventy-one dollars and twenty-six cents ($571.26).

Wherefore it is considered by the court that the plaintiff do have and recover of and from the defendant the sum of five hundred seventy-one dollars and twenty-six cents ($571.26), its damages by it sustained by occasion of the premises in its complaint herein set forth and alleged in form aforesaid assessed, together with its costs by it in this behalf laid out and expended to be taxed.

21 In United States District Court

[Title omitted.]

Judgment

Jan. 5, 1925

On this fifth day of January, A. D. 1925, the same being one of the regular juridical days of the November term, A. D. 1924, of said court. Present: The Honorable J. Foster Symes, district judge.

Wherefore it is considered by the court that the plaintiff do have and recover of and from the defendant the sum of five hundred seventy-one dollars and twenty-six cents ($571.26), its damages by it sustained by occasion of the premises in its complaint herein set forth and alleged in form aforesaid assessed, together with its costs by it in this behalf laid out and expended to be taxed.

22 In United States District Court

[File endorsement omitted.]

[Title omitted.]

Motion to set aside judgment

Filed Feb. 5, 1925

Comes now the United States of America, defendant herein, through its attorneys, George Stephan, United States attorney for the District of Colorado, and Clarence L. Ireland, assistant United States attorney for the District of Colorado, and moves that the judgment heretofore entered in the above-entitled cause, on, to wit, the fifth day of January, A. D. 1925, be set aside, vacated, and held for naught for the following reasons:

1. That said judgment was entered upon the pleadings herein in violation of law.

2. That said judgment was entered upon the pleadings herein contrary to the procedure of law in such case made and provided.

3. That said judgment was entered by the court upon the pleadings herein and not in pursuance of a written opinion of the
23 court setting forth the specific findings by the court of the facts herein, and the conclusions of the court upon all questions of law involved in the case, in accordance with the procedure of law in such case made and provided, as more particularly set forth in Section 7, 24 Statutes 506, act of March 3, 1887, c. 359.

4. That it appears upon the face of the record that said judgment is contrary to law.

GEORGE STEPHAN,
United States Attorney in and for the District of Colorado.
CLARENCE L. IRELAND,
Assistant United States Attorney in and for the District of Colorado.

In United States District Court

[Title omitted.]

Order denying motion to set aside judgment

Feb. 10, 1925

At this day comes the plaintiff, by Edwin H. Park, Esquire, its attorney, and the defendant, by Clarence L. Ireland, Esquire,
24 assistant district attorney, also comes. And the motion to vacate the judgment heretofore entered herein, coming on now to be heard is submitted to the court. And the court having considered the same and being now fully advised in the premises:

It is ordered by the court that the said motion be, and the same is hereby denied.

In United States District Court

[File endorsement omitted.]
[Title omitted.]

Findings of fact and conclusions of law

Filed Feb. 11, 1925

The above cause having come on to be heard upon this 5th day of January, A. D. 1925, being one of the regular juridical days of the November, A. D. 1924, term of said court upon the demurrer
25 of the plaintiff to the answer of the defendant, and the court being sufficiently advised in the premises, doth find:

That the answer of the defendant, the United States of America, does not change the facts as stated in the opinion of the court heretofore and on the 31st day of July, A. D. 1924, filed herein, overruling defendant's demurrer to plaintiff's complaint and the court, therefore, finds the facts as therein stated.

The court further finds the law to be as stated in said opinion aforesaid and upon this demurrer of the plaintiff to defendant's answer adheres to the law as stated in said opinion and the demurrer of the plaintiff to the answer of the defendant is hereby sustained and the defendant declining to *to* answer further, judgment may be entered for the plaintiff and against the defendant upon these findings of fact and law.

It is further ordered that these findings of fact and law shall be filed as of the 5th day of January, 1925.

By the court:

J. FOSTER SYMES, *Judge.*

26 In United States District Court

[File endorsement omitted.]

[Title omitted.]

Assignments of error

Filed Mar. 27, 1925

Comes now the United States of America, defendant herein, through its attorneys, George Stephan, United States attorney for the District of Colorado, and Clarence L. Ireland, assistant United States attorney for the District of Colorado, and says:

That in the record of the proceedings in this case there is manifest error prejudicial to the rights of the defendant, and files the following assignment of errors upon which it relies, in this, to wit:

27 I

That the court erred in overruling defendant's demurrer to the complaint filed in the above-entitled cause, and ruling that said complaint was sufficient in law to be answered unto.

II

The court erred in sustaining the demurrer of the plaintiff to the answer of the defendant, and ruling that said answer was not sufficient in law to be replied unto.

III

The court erred in rendering and entering judgment upon the pleadings herein, for the reason that the act of Congress, approved March 3, 1887, sec. 7, 24 Stat. 506, specifically states that it is the duty of the court to cause a written opinion to be filed in the cause, setting forth specifically the findings by the court of the facts therein, and conclusions of the court upon all questions of law involved in the cause and to render judgment thereon.

IV

The court erred in ruling that the $15,143.92 deposited in Cause No. 6720, being the Minnesota Mutual Investment Company, vs. Victor G. McGirr, et al., was deposited by the clerk of the
28 court in the First National Bank in accordance with rule 20 of the court, under an agrement that said bank was to pay two per cent thereon, and which interest, according to the rule, became a part of the deposit.

V

The court erred in ruling that it could take judicial notice of its own relations with the bank, and the fact that a contract for interest existed between its clerk and the bank in question for the payment of interest under rule 20, of the district court for this district, and that said interest was paid to him to the time the arrangements was interefered with by the arbitrary and unauthorized action of the Secretary of Treasury.

VI

The court erred in ruling that no contract could exist between the bank and the defendant in respect to interest on the moneys in question, because the clerk deposited them in the bank under an order of the court, independent of the Secretary of Treasury.

VII

The court erred in ruling that the plaintiff had a cause of action against the defendant for the moneys in question.

VIII

The court erred in holding that plaintiff herein could
29 collaterally attack the contract then and there existing between the Secretary of Treasury and the First National Bank, a banking corporation, in the city and county of Denver, State of Colorado.

IX

The court erred in assessing plaintiff's damages against the defendant in the sum of five hundred seventy-one dollars twenty-six cents ($571.26).

X

The court erred in rendering and entering judgment in favor of the plaintiff herein against the United States of America for its costs by it in this behalf laid out and expended.

XI

That the judgment herein is contrary to the law in the case.

XII

That said judgment is contrary to the pleadings in the case.

XIII

That said judgment is contrary to the law and the pleadings in the case.

Wherefore, the defendant, the United States of America herein, prays that the order and judgment of the court en-
30 tered as aforesaid against it, may be wholly set aside, annulled and reversed and for naught held; that the cause be remanded to the said district court with directions to dismiss plaintiff's complaint herein; and for such other, further, and different relief to which it may be entitled.

Dated at Denver, Colorado, this 27th day of March, A. D. 1925.

GEORGE STEPHAN,
United States Attorney for the District of Colorado.

CLARENCE L. IRELAND,
Assistant United States Attorney for the District of Colorado.

31 In United States District Court

[File endorsement omitted.]

[Title omitted.]

Præcipe for transcript of record

Filed Jan. 23, 1925

To CHARLES W. BISHOP,
Clerk, District Court of the United States:

You are requested to prepare certified copies of the following records in your office in the above-entitled cause:

1. Complaint.
2. Affidavit of Edwin H. Park.
3. Demurrer to complaint.
4. Brief of defendant in support of demurrer to complaint.
5. Brief of plaintiff in answer to defendant's brief on a demurrer to complaint.
6. Opinion of court, filed July 31, 1924.
7. Decision of the court on the demurrer to the complaint.

32

8. Answer.
9. Demurrer to answer.
10. Decision of the court on the demurrer to the answer.
11. Entry of judgment rendered.
12. Exceptions saved on behalf of the United States attorney's office.

GEORGE STEPHAN,
Attorney for the United States of America, Defendant.

33 In United States District Court

[File endorsement omitted.]
[Title omitted.]

Additional præcipe for transcript of record

Filed Feb. 11, 1925

To CHARLES W. BISHOP,
Clerk, District Court of the United States:

You are requested to prepare certified copies of the following records in your office in the above-entitled cause:

1. Motion to vacate judgment.
2. Order thereon.
3. Findings of Fact and Conclusions of Law, filed February 11, 1925.

GEORGE STEPHAN,
Attorney for the United States of America, Defendant.
A. M. G.

34 In United States District Court

[File endorsement omitted.]

Writ of error

Filed Mar. 27, 1925

The President of the United States of America, to the honorable, the Judge of the District Court of the United States for the District of Colorado, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said district court, before you at the November term, 1924, thereof, between the Minnesota Mutual Investment Company, a corporation, and the United States of America, a manifest error hath happened, to the great damage of the said the United States of America, as by complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, at Washington, D. C., together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, D. C., and filed in the office of the clerk of the Supreme Court of the United States on or before the twenty-fifth day of April, A. D. 1925, to the end that the record and proceedings aforesaid being inspected, the Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable William H. Taft, Chief Justice of the United States, this 27th day of March in the year of our Lord one thousand nine hundred and twenty-five and of the independence of the United States the one hundred forty-ninth year. Issued, at office in the city and county of Denver, in said district, with the seal of the District Court of the United States for the District of Colorado, and dated as aforesaid.

CHARLES W. BISHOP,
Clerk, U. S. District Court, District of Colorado.

Allowed by
J. FOSTER SYMES.

35 *Return to writ of error*

[Omitted in printing.]

36 [Citation in usual form showing service on Edwin H. Park, filed Mar. 27, 1925, omitted in printing.]

37 [Clerk's certificate to foregoing transcript omitted in printing.]

In United States District Court

ile endorsement omitted.]
itle omitted.]

Memorandum opinion

Filed July 31, 1924

ıe plaintiff herein some years ago was a party to an action in court, and in the course thereof deposited with the clerk of the t certain monies to await the outcome of said suit. The latter, ccordance with rule 20 of the court, deposited the same in one he designated national banks, under an agreement with said sitary to pay two per cent interest thereon. This interest, acing to the rule, became part of the deposit.

t the termination of the litigation referred to the fund in question was returned to this plaintiff. In this action it seeks to recover from the United States the interest admittedly paid it on said sum by the bank, pursuant to certain regulations of the etary of the Treasury, promulgated in 1913. These purported to ire all Government depositaries to pay two per cent interest to Treasury of the United States on all Government deposits, ining court funds.

he demurrer now before the court asserts that the complaint not state a cause of action.

he Government contends that the Treasury regulations referred re authorized, and have the force of law, pursuant to section 5153 he Rev. Stats. But that section refers only to public monies, s not in point. Monies paid into court in causes pending ein and deposited in a designated depositary of the United States he clerk are not public monies. Branch v. U. S., 100 U. S., 673; dert v. U. S., 175 U. S., 178 U. S. v. MacMillan, 209 Fed. 266. rmed 251 Fed. 55. If sec 5153, supra, included court funds, e would be no necessity for secs. 995 and 996, Rev. Stats. The visions of these two sections refer to court funds exclusively, and ct that such funds be deposited either with the Treasurer of the United States or a designated depositary of the United States "in the name and to the credit of said court." Public funds as such are not referred to therein, thus disclosing the clear nt of Congress to distinguish between public monies and court ds. And, further, these sections are in harmony with rule 20, thus avoid a seeming conflict between the rule and sec. 5153, ra.

he Government cites Chatham & Phenix Nat. Bank v. Guary Trust Co., 256 Fed. 90, as decisive of the question. An examion of the case, however, discloses the fact that it does not supt its contentions. In that case it was sought to make a bank, which the clerk of the court had deposited monies, held subject to

the outcome of litigation, pay interest thereon to the party that was found entitled to the monies. The court, after holding that there was no jurisdiction over the bank, because it was not a party, said:

"And if it owed interest on the deposit, it owed it to the depositor, the clerk of the court, who alone had standing to collect the same."

Further, the court specifically declined to express an opinion on the question of whether the Secretary of the Treasury could by virtue of sec. 5153, Rev. Stats., require the depositary to pay interest to the United States upon balances, including monies deposited by courts, and found that there was no contract
41 between the bank and the clerk for the payment of interest on such deposit, and that the clerk had received none.

I think this court can take judicial notice of its own relations with the bank, and the fact that a contract for interest existed between its clerk and the bank in question, for the payment of interest agreeable to rule 20, and that the same was paid to him up to the time the arrangement was interfered with by the arbitrary and unauthorized action of the Secretary of the Treasury in promulgating the regulations referred to.

If I am correct so far it logically follows that the regulations of the Secretary of the Treasury referred to do not apply to the fund in question, and, further, that no contract could exist between the bank and the Government in respect to interest on these monies, because the clerk deposited them in the bank pursuant to an order of the court, independent of the Secretary of the Treasury, and the bank, therefore, received no consideration for the agreement to pay interest, referred to in the brief for the Government. This, however, is not necessary to a decision on the demurrer, because the contract is not now disclosed in the pleadings. Therefore, the Government, due to a mistake in law, has received something which in equity
42 and good conscience belon'ed to the plaintiff. The care with which such funds are guarded, and the rights of the owner thereof protected, is shown by the case of American Loan & Trust Co. v. Grand Rivers Co., 159 Fed. 775.

The demurrer is overruled, and the defendant may have thirty days to answer, in default of which judgment may be entered as prayed for.

J. FOSTER SYMES,
District Judge.

JULY 31, 1924.

43 [Clerk's certificate to foregoing paper omitted in printing.]

[Indorsement on cover:] File No. 31011. Colorado D. C. U. S. Term No. 348. The United States of America, plaintiff in error, vs. The Minnesota Mutual Investment Company. Filed April 8th, 1925. File No. 31011.